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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,370	09/08/2000	Greerson G. McMullen	GEH-01-062	3577

7590 09/10/2003

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EXAMINER

KALINOWSKI, ALEXANDER G

ART UNIT

PAPER NUMBER

3626

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

Office Action Summary

Application No.
09/658,370

Applicant(s)
McMullen et al.

Examiner
Alexander Kalinowski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 26, 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

1. Claims 1-28 are presented for examination. Of claims 1-20 originally filed on 9/8/2000, Applicant filed an amendment on 6/26/2003 amending claims 1 and 11 and adding new claims 21-28. In light of new limitations added by Applicant's amendment to independent claims 1 and 11 that were not present in the previously pending claims, the Examiner withdraws the grounds of rejection of claims 1-17 based on 35 USC 102. However, new grounds of rejection are established for claims 1-17 based on 35 USC 103. Furthermore, the Examiner maintains the grounds of rejection of claims 18-20 based on 35 USC 102. Finally, new grounds of rejection are established in the instant office action for newly added claims 21-28. Since the new grounds of rejection of claims 1-17 were necessitated by Applicant's amendment, the rejection of claims 1-28 in the instant office action is a final rejection of claims 1-28.

Response to Arguments

2. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection. The Examiner notes that Applicant added new limitations to independent claims 1 and 11 directed to "recommending business activities relating to managing the transportation business entity based on at least one of the generated problem area data set and the comparison of collected and standard data". This limitation was not found in the previously pending claims. The newly added limitation to independent claims 1 and 11 necessitated a new search for prior art by the Examiner. Newly found prior art was used by the

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Examiner to establish new grounds of rejection for claims 1-17 as set forth in detail in the next section below.

3. The Examiner notes several errors in Applicant's statement with respect to the claims. On page 5, Applicant argues that claims 12-20 depend directly or indirectly from independent claim 1. A careful review of the claims clearly discloses that claims 12-17 depend directly or indirectly on independent claim 11, not independent claim 1. The Examiner assumes that a grammatical error occurred in the Applicant's response when characterizing dependent claims 12-17. The Examiner further notes that claims 18-20 were characterized by Applicant on page 5 as depending directly or indirectly on claim 1. However, a careful review of the claims discloses that claim 18 was an independent claim and that claims 19 and 20 depend directly on independent claim 18. In addition, the Examiner notes that independent claim 18 does not contain any claim language that incorporates the feature of "recommending business activities relating to managing the transportation business entity based on at least one of the generated problem area data set and the comparison of collected and standard data". Therefore, the Examiner notes that since Applicant argues this feature with respect to claims 18-20, the claims do not contain any language directed to this feature. Applicant's arguments with respect to claims 18-20 are directed to a feature that was not claimed. Since this feature was not claimed with respect to claims 18-20, Applicant's arguments directed to claims 18-20 are non persuasive.

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4. Finally, arguments directed to newly added claims 21-28 were based on the newly added limitation to independent claims 1 and 11 and the Examiner directs Applicant to the next section below for a detailed explanation of the grounds of rejection of claims 21-28.

5. Since the new grounds of rejection of claims 1-17 were necessitated by Applicant's amendment, the rejection of claims 1-28 in the instant office action is a final rejection of claims 1-28.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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7. Claims 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Nickles et al., Pat. No. 6,144,901 (hereinafter Nickles).

As to claim 18, Nickles discloses a system comprising a plurality of sub-systems and a central data center, said system configured to:

collect at least one set of transportation data from at least one subsystem (i.e. monitors parameters ... based on the current energy state of the train)(col. 4, line 53 - col. 5, line 5);

compare said collected transportation data set to at least one standard transportation data (i.e. programming limits into the system such that when the limits are exceeded ...)(col. 5, lines 33-40);

and

generate at least one problem area data set based upon the comparison of the collected and standard data without human intervention (col. 10, lines 37-58 and col. 11, lines 12-21).

As to claim 19, Nickles discloses a system in accordance with Claim 18 comprising at least one locomotive sub-system attached to a locomotive, each said locomotive sub-system including a GPS receiver and a transceiver, said locomotive sub-system configured to determine a real-time absolute geographic position of the locomotive (col. 5, lines 8-10 and col. 9, lines 37-50).

As to claim 20, Nickles discloses a system in accordance with Claim 18 further configured to determine a predicted locomotive delay based upon said problem area data (col. 8, lines 22-31 and col. 11, lines 12-21).

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Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-17, 21-23, 25, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nickles in view of Gibbs, Pat. No. 5,836,529.

As to claim 1, Nickles discloses a method for managing a transportation system (see abstract), said method comprising the steps of:

collecting at least one set of transportation data from at least one subsystem (i.e. monitors parameters ... based on the current energy state of the train)(col. 4, line 53 - col. 5, line 5);

comparing the at least one set of collected transportation data set to at least one standard transportation data (i.e. programming limits into the system such that when the limits are exceeded ...)(col. 5, lines 33-40); and

generating at least one problem area data set based upon the comparison of the collected and standard data (col. 10, lines 37-58 and col. 11, lines 12-21).

Nickles does not explicitly disclose

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recommending business activities relating to managing the transportation business entity based on at least one of the generated problem are data set and the comparison of the collected and standard data.

However, Gibbs discloses recommending business activities relating to managing the transportation business entity based on at least one of the generated problem are data set and the comparison of the collected and standard data (i.e. ... if the data item deviate from the user specified value or a range of nominal or expected values , an alert signal is generated ... warns the user of the variance ...)(col. 4, lines 1-24 and col. 12, lines 33-48). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include recommending business activities relating to managing the transportation business entity based on at least one of the generated problem are data set and the comparison of the collected and standard data as disclosed by Gibbs within Nickles for the motivation of providing railroad personnel with a set of tools for maximizing resource allocation, minimizing exceptions and improving on-time delivery to their customers (col. 4, lines 11-24).

As to claim 2, Nickles discloses a method in accordance with Claim 1 wherein the at least one sub-system includes at least one of a wayside sub-system, a locomotive sub-system, a railcar sub-system, a yard sub-system, a schedule sub-system, a monitoring and diagnostic sub-system and a management making sub-system (Fig. 2, Fig. 5 and col. 4, line 53 - col. 5, line 5).

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As to claim 3, Nickles discloses a method in accordance with Claim 1 wherein collecting at least one set of transportation data from at least one sub-system comprises the step of collecting real-time data from at least one sub-system (col. 4, line 53 - col. 5, line 5).

As to claim 4, Nickles discloses a method in accordance with Claim 3 wherein the transportation system includes at least one vehicle, said method further comprising the step of altering a performance of the vehicle based upon the problem area data set (col. 10, lines 37-58 and col. 11, lines 12-21).

As to claim 5, Nickles discloses a method in accordance with Claim 4 wherein said step of altering the performance of the vehicle based upon the problem area data set comprises the step of continuously altering the performance of the vehicle based upon the real-time data (col. 4, lines 53-62 and col. 7, line 59 - col. 8, line 21).

As to claim 6, Nickel discloses a method in accordance with Claim 1 further comprising the step of identifying at least one source of delay (col. 4, lines 53-62 and col. 14, lines 31-49).

As to claim 7, Nickles discloses a method in accordance with Claim 6 wherein said step of identifying at least one source of delay comprises the step of identifying a defined quantity of largest source of delays (col. 12, line 25 - col. 13, line 54).

As to claim 8, Nickles discloses a method in accordance with Claim 1 wherein said step of identifying a defined quantity of largest source of delays comprises the step of a user selecting a number of largest source of delays(col. 12, line 25 - col. 13, line 54).

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As to claim 9, Nickles discloses a method in accordance with Claim 1 further comprising the steps of determining a predicted a vehicle delay based upon the problem area data (col. 8, lines 22-31 and col. 11, lines 12-21).

As to claim 10, Nickles discloses a method in accordance with Claim 1 wherein said step of collecting at least one set of transportation data from at least one sub-system comprises the step of transmitting data between at least one sub-system and a data center utilizing at least one communication link (col. 8, lines 13-21).

As to claim 11, Nickles discloses a management system for managing a transportation system comprising:

at least one sub-system for collecting at least one set of transportation data (i.e. monitors parameters ... based on the current energy state of the train)(col. 4, line 53 - col. 5, line 5);

a sub-system for comparing the at least one set of collected transportation data set to at least one standard transportation data (i.e. programming limits into the system such that when the limits are exceeded ...)(col. 5, lines 33-40); and

a sub-system for generating at least one problem area data set based upon the comparison of the collected and standard data (col. 10, lines 37-58 and col. 11, lines 12-21).

Nickles does not explicitly disclose

a management and decision making sub-system that is configured to recommend business activities relating to managing the transportation business entity based on at least one of the generated problem data set and the comparison of the collected and standard data.

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However, Gibbs discloses a management and decision making sub-system that is configured to recommend business activities relating to managing the transportation business entity based on at least one of the generated problem data set and the comparison of the collected and standard data (i.e. ... if the data item deviate from the user specified value or a range of nominal or expected values , an alert signal is generated ... warns the user of the variance ...)(col. 4, lines 1-24 and col. 12, lines 33-48). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include a management and decision making sub-system that is configured to recommend business activities relating to managing the transportation business entity based on at least one of the generated problem data set and the comparison of the collected and standard data as disclosed by Gibbs within Nickles for the motivation of providing railroad personnel with a set of tools for maximizing resource allocation, minimizing exceptions and improving on-time delivery to their customers (col. 4, lines 11-24).

As to claim 12, Nickles discloses a management system in accordance with Claim 11 wherein said at least one sub-system includes at least one of a wayside sub-system, a locomotive sub-system, a railcar sub-system, a yard sub-system, a schedule sub system, a monitoring and diagnostic sub-system and a management or decision making sub-system (Fig. 2, Fig. 5 and col. 4, line 53 - col. 5, line 5).

As to claim 13, Nickles discloses a management system in accordance with Claim 11 wherein said at least one sub-system for collecting at least one set of transportation data is

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configured to collect real-time data from said at least one sub-system (col. 4, line 53 - col. 5, line 5).

As to claim 14, Nickles discloses a management system in accordance with Claim 13, wherein the transportation system includes at least one vehicle, said management system configured to alter a performance of at least one vehicle based upon the problem area data set (col. 10, lines 37-58 and col. 11, lines 12-21)

As to claim 15, Nickles discloses a management system in accordance with Claim 14 wherein at least one sub-system is configured of continuously altering the performance of the vehicle based upon the real-time data (col. 4, lines 53-62 and col. 7, line 59 - col. 8, line 21).

As to claim 16, Nickles discloses a management system in accordance with Claim 11 wherein said at least one sub-system is configured to identify at least one source of delay (col. 4, lines 53-62 and col. 14, lines 31-49).

As to claim 17, Nickles discloses a management system in accordance with Claim 16 wherein said at least one sub-system is further configured to identify a pre-defined quantity of largest source of delays (col. 12, line 25 - col. 13, line 54).

As to claim 21, Nickles does not explicitly disclose a method in accordance with Claim 1 wherein generating at least one problem area data set based upon the occurrence comparison of the collected and standard data comprises identifying delays for each of at least one of a selected type of delay or failure.

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However, Gibbs discloses wherein generating at least one problem are data set based upon the occurrence comparison of the collected and standard data comprises identifying delays for each of at least one of a selected type of delay or failure (i.e. no power available, ...)(see Fig. 8d). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include wherein generating at least one problem are data set based upon the occurrence comparison of the collected and standard data comprises identifying delays for each of at least one of a selected type of delay or failure as disclosed by Gibbs within Nickles for the motivation of providing railroad personnel with a set of tools for maximizing resource allocation, minimizing exceptions and improving on-time delivery to their customers (col. 4, lines 11-24).

As to claim 22, Nickles does not explicitly disclose a method in accordance with Claim 21 wherein said selected type of delay comprises at least one of locomotive delays, railcar delays, maintenance delays and broken track delays.

However, Gibbs discloses wherein said selected type of delay comprises at least one of locomotive delays, railcar delays, maintenance delays and broken track delays (see Fig. 8d). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include wherein said selected type of delay comprises at least one of locomotive delays, railcar delays, maintenance delays and broken track delays as disclosed by Gibbs within Nickles for the motivation of providing railroad personnel with a set of tools for maximizing resource allocation, minimizing exceptions and improving on-time delivery to their customers (col. 4, lines 11-24).

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As to claim 23, Nickles does not explicitly disclose a method in accordance with claim 21 wherein recommending business activities comprises sorting the identified delays based upon a magnitude of delays.

However, Gibbs discloses wherein recommending business activities comprises sorting the identified delays based upon a magnitude of delays (see Fig. 8e). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include wherein recommending business activities comprises sorting the identified delays based upon a magnitude of delays as disclosed by Gibbs within Nickles for the motivation of providing railroad personnel with a set of tools for maximizing resource allocation, minimizing exceptions and improving on-time delivery to their customers (col. 4, lines 11-24).

As to claim 25, Nickles does not explicitly disclose a method in accordance with claim 1 wherein generating at least one problem area data set based upon the comparison of the collected and standard data recommending comprises determining shipment damage locations.

However, Gibbs discloses generating at least one problem area data set based upon the comparison of the collected and standard data recommending comprises determining shipment damage locations (i.e. warning criteria)(Fig. 8a, 8b, 8d and 9b). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include generating at least one problem area data set based upon the comparison of the collected and standard data recommending comprises determining shipment damage locations as disclosed by Gibbs within Nickles for the motivation of providing railroad personnel with a set of tools for maximizing

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resource allocation, minimizing exceptions and improving on-time delivery to their customers (col. 4, lines 11-24).

As to claim 27, Nickles does not explicitly disclose a method in accordance with claim 1 wherein recommending business activities relating to managing the transportation business entity comprises providing real time transportation entity management with real time transportation system wide problem area data sets.

However, Gibbs discloses wherein recommending business activities relating to managing the transportation business entity comprises providing real time transportation entity management with real time transportation system wide problem area data sets (see Fig. 8d and 8e). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include wherein recommending business activities relating to managing the transportation business entity comprises providing real time transportation entity management with real time transportation system wide problem area data sets as disclosed by Gibbs within Nickles for the motivation of providing railroad personnel with a set of tools for maximizing resource allocation, minimizing exceptions and improving on-time delivery to their customers (col. 4, lines 11-24).

As to claim 28, Nickles does not explicitly disclose a system in accordance with claim 11 comprising a management and decision making sub-system configured to provide transportation entity management with real time transportation system wide problem area data sets.

However, Gibbs discloses a management and decision making sub-system configured to provide transportation entity management with real time transportation system wide problem area

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data sets(see Fig. 8d and 8e). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include a management and decision making sub-system configured to provide transportation entity management with real time transportation system wide problem area data sets as disclosed by Gibbs within Nickles for the motivation of providing railroad personnel with a set of tools for maximizing resource allocation, minimizing exceptions and improving on-time delivery to their customers (col. 4, lines 11-24).

10. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nickles and Gibbs as applied to claim 1 above, and further in view of Goode, David R., "Pruning and improving the equipment fleet" (hereinafter Goode).

As to claim 24, Nickles and Gibbs do not explicitly disclose a method in accordance with Claim 1 wherein recommending business activities relating to managing transportation business activity comprises at least one of predicting a life of a railcar and predicting a maintenance cost of the railcar over the life of the railcar.

However, Goode discloses recommending business activities relating to managing transportation business activity comprises at least one of predicting a life of a railcar and predicting a maintenance cost of the railcar over the life of the railcar (i.e. removing cars that are unfit to load ... removing cars with high maintenance history ...)(page 2). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include recommending business activities relating to managing transportation business activity comprises

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at least one of predicting a life of a railcar and predicting a maintenance cost of the railcar over the life of the railcar as disclosed by Goode within Nickles and Gibbs for the motivation of better meeting customer loading demand and improve return on invested capital while freeing the railroad to give better service (page 2, second full paragraph).

11. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nickles and Gibbs as applied to claim 1 above, and further in view of "The proof is in the payout"(hereinafter Payout).

As to claim 26, Nickles and Gibbs do not explicitly disclose a method in accordance with Claim 1 wherein recommending business activities relating to managing the transportation entity comprises determining at least one of an insurance claim type, a quantity of insurance claims, and a risk profile of at least one of a transportation carrier, railcar car and a route.

However, Payout discloses recommending business activities relating to managing the transportation entity comprises determining at least one of an insurance claim type, a quantity of insurance claims, and a risk profile of at least one of a transportation carrier, railcar car and a route (i.e. loss and damage claims ... damage prevention ...)(see abstract and pages 1-2) It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include recommending business activities relating to managing the transportation entity comprises determining at least one of an insurance claim type, a quantity of insurance claims, and a risk profile of at least one of a transportation carrier, railcar car and a route as disclosed by Payout

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within Nickles and Gibbs for the motivation of encouraging damage prevention techniques (page 2, column 1 and page 3, column 3).

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Kalinowski, whose telephone number is (703) 305-2398. The examiner can normally be reached on Monday to Thursday from 6:30 AM to 4:00 PM. In addition, the examiner can be reached on alternate Fridays.

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If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached on (703) 305-9588. The fax telephone number for this group is (703) 305-7687 (for official communications including After Final communications labeled "Box AF").

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th Floor, receptionist.



Alexander Kalinowski

Patent Examiner

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September 8, 2003